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IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-976

IMPERIAL GOVERNMENT OF IRAN, Petitioner

v.

PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, SQUIBB CORPORATION, OLIN CORPORATION AND THE UPJOHN COMPANY, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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OCTOBER TERM 1975

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IMPERIAL GOVERNMENT OF IRAN, Petitioner

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PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, SQUIBB CORPORATION, OLIN CORPORATION AND THE UPJOHN COMPANY, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, the Imperial Government of Iran, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in Pfizer, Inc., et al. v. Republic of Vietnam, et al., (No. 74-1847) entered on August 27, 1975.

Since this petition is governed by the same opinion and orders below, the same questions

presented, the same procedural history, legal issues and basic facts as No. 75-975, Government of India v. Pfizer, Inc., et al., we adopt in its entirety the petition for a writ of certiorari together with the appendices incorporated therein which has been filed on this date in that case as part of this petition together with certain additions and modifications as noted below.

REPORTS OF OPINIONS BELOW

The opinion of the Court of Appeals with respect to which this writ is being sought is reported at 522 F.2d 612 (8th Cir. 1975) and appears as Appendix A to the Petition for a Writ of Certiorari in No. 75-975. As it is written, this opinion is divided into two parts. Part I deals with the mandamus issue raised in Pfizer, Inc., et al. v. Lord and Republic of Vietnam, et al. (No. 74-1680).

Part II deals with the official representative-parens patriae issue raised in Pfizer, Inc., et al. v. Republic of Vietnam, et al. (No. 74-1847).

In this petition we seek review only of the Court of Appeals decision in Pfizer, Inc., et al. v. Republic of Vietnam, et al. (No. 74-1847) which is Part II of the Court's opinion in Appendix A to the petition in 75-975, India v. Pfizer.

The order of the District Court (Miscellaneous Order 74-37) dated June 17, 1974, by Judge Miles W. Lord, is unreported and appears as Appendix C to the petition in 75-975, India v. Pfizer.

## JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on August 27, 1975. On November 17, 1975, petitioner secured

an extension of time in which to file this petition until January 9, 1976, by an Order of the Court signed by Mr. Justice Blackmun. This petition for certiorari is being filed within that time period accompanied by a certificate of service to respondents and payment of appropriate fee. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Whether the Imperial Government of Iran has standing under Section 4 of the Clayton Act (15 U.S.C. §15) to assert and prosecute as official representative or as parens patriae the antitrust damage claims of its nationals (persons, companies, and institutions) resulting from conduct of respondents violative of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1, 2) and affecting the foreign commerce of the United States where the

Government of Iran asserts a pecuniary interest in the litigation derived from excessive drain on its foreign exchange resulting from payment of monopoly prices by its nationals for purchase of antibiotic drugs from respondents, where the Government of Iran has an obligation recognized by international law to vindicate the rights of its nationals and where individual or class actions to secure remedies conferred by law are impractical?

## PROCEDURAL HISTORY

The Imperial Government of Iran filed its complaint pursuant to the provisions of Section 4 of the Clayton Act (15 U.S.C. §15) on February 6, 1974, alleging violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2) in connection with the marketing of broad spectrum antibiotic drugs (BSA) to purchasers and consumers in Iran. The Iranian Government sued in four capacities:

(1) as a foreign sovereign for injury to its own proprietary interests; (2) as representative of various classes of Iranian purchasers and consumers for injury to them; (3) as official representative of its nationals for direct injury suffered by them; and (4) in parens patriae to vindicate the rights of its nationals infringed by breach of the antitrust laws. Respondents moved to dismiss the complaint on the ground that the Government of Iran lacked standing to sue under Section 4 either on its own behalf or as official representative or as parens patriae in behalf of its nationals. The District Court (Judge Lord) denied the motion insofar as it applied to standing to sue as official representative or as parens patriae, and on September 5, 1974, it certified these issues for interlocutory appeal. The Eighth

Circuit granted permission to appeal and on August 27, 1974, rendered its decision as described above and in 75-975, India v. Pfizer.

BACKGROUND STATEMENT

Iran is acting here in furtherance of Iranian law and policy to press claims on behalf of its nationals conferred by United States statutes. The ability of a sovereign government to do this unilaterally (with or without the approval of the nationals involved) is a well recognized principle of international law espoused by our own Department of State.

The role of Iran in acting as official representative or as parens patriae with respect to these claims is far different from that of a State of the Union functioning in a similar capacity. With respect to factors of time, distance and

communication, this method is the only method of securing to Iranian nationals the rights and remedies conferred on them by our antitrust laws. It is not practical for Iranian nationals to institute individual actions under Section 4 nor is it practical to prosecute these claims by means of class actions under Rule 23 of the Federal Rules of Civil Procedure.

## REASONS FOR GRANTING THE WRIT

We subscribe fully to the reasons advanced in the petition of India v. Pfizer, No. 75-975, for granting the writ and respectfully add the following comments.

This decision of the Eighth Circuit is important in that it undertakes to define for the first time the outer boundaries of standing to sue under Section 4 of the Clayton Act. This

circumstance alone should provide sufficient justification for review by this Court. It is not going too far to say that the outcome of this case will influence the development of international antitrust law for years to come.

We also believe that the Court of Appeals may have seriously misconceived the existence of a due process issue in this case. As we have already stated it is well recognized that a foreign sovereign has the prerogative of unilateral espousal of international claims of its nationals and that no constitutional rights are involved in such espousal.

Furthermore, in this instance there has been no expropriation of these claims of its nationals by the Iranian Government. On September 9, 1974, the Council of Ministers of

Iran issued the following decree (translated from the original Farsi):

> "The Council of Ministers in the meeting of 7/6/1353 decided that in order to compensate for losses resulting from the sales of tetracycline drugs to the citizens of the Imperial Government and to the government of Iran at prices higher than legal and fair prices, the funds collected from the sellers of aforementioned drugs as a result of filing suit against the American sellers of the tetracycline drugs -- which funds being the result of conviction or any other title, under the judicial decision or by arrangement -- shall be spent for charitable purposes on antibiotic drugs for the needy Iranians residing in the country. The original decree is in Prime Minister's Office."

It is certified that above text is identical to the original decree.

## CONCLUSION

For the reasons advanced above and in the petition of India v. Pfizer, No. 75-973, we respectfully request the grant of a writ of certiorari.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit was served upon the following by depositing copies in the U. S. mail, first class, postage prepaid, on January 9, 1976.

Dated: January 9, 1976

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